

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

JV TRUCKING
Respondent

Case Nos.: I-00-10445
I-00-10467

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code § 6-2701, et seq.) and Title 20, Chapter 9, of the District of Columbia Municipal Regulations (“DCMR”).¹ By Notice of Infraction (00-10445) served on October 31, 2000, the Government charged Respondent JV Trucking with a violation of 20 DCMR 900.1, which prohibits, with certain exceptions, motor vehicles from idling their engines for more than three (3) minutes while parked, stopped or standing. The Notice of Infraction alleges that a tractor operated by Respondent violated 20 DCMR 900.1 in the 1200 block of First Street, N.E. on October 18, 2000, and seeks a fine amount of \$500.00. *See* 16 DCMR 3224.3(aaa); 36 D.C. Reg. 8699 (October 29, 1999); 46 D.C. Reg. 6017 (July 23, 1999).

¹ This administrative court has jurisdiction over these matters pursuant to Reorganization Plan No. 4 of 1996, Mayor’s Order No. 97-42, Mayor’s Order No. 99-68 and D.C. Department of Health Organizational Order No. 99-24.

Respondent failed to respond timely to the Notice of Infraction (00-10445) as set forth in the instructions on the face of the Notice of Infraction. *See* D.C. Code § 6-2712. Accordingly, on November 24, 2000, this administrative court issued an order finding Respondent in default and assessing the statutory penalty of \$500.00 in addition to the fine sought by the Government. *See* D.C. Code § 6-2712(f). The November 24 order also directed the Government to serve a second Notice of Infraction. *Id.* The second Notice of Infraction (00-10467) was served upon the Respondent on November 30, 2000.

On December 6, 2000, this administrative court received a letter from Jose Victor Vasquez dated December 1, 2000.² In the letter, Mr. Vasquez stated that he was willing to pay the \$500.00 fine sought by the Government for the alleged violation of 20 DCMR 900.1. Mr. Vasquez also requested that the penalty imposed for his failure to respond timely to the Notice of Infraction (00-10445) be suspended or reduced.

This administrative court construed Mr. Vasquez's letter as an untimely plea of Admit with Explanation, along with a request for a suspension or reduction in the assessed penalty. By order dated February 1, 2001, this administrative court permitted the Government to respond to Respondent's plea and request within ten (10) calendar days of the order's service date.³

² In his letter, Mr. Vasquez refers to the vehicle referenced in the Notices of Infraction as "my truck." Moreover, the address for Respondent JV Trucking listed on the Notices of Infraction is the same as the return address listed on Mr. Vasquez's letter. Although the precise nature of Mr. Vasquez's relationship to Respondent JV Trucking is not clear from the record, this administrative court concludes that JV Trucking has held Mr. Vasquez out to have apparent, if not actual, authority to answer the Notices of Infraction on behalf of Respondent JV Trucking and bind that entity for purposes of proceedings herein. *See Insurance Management, Inc. v. Eno & Howard Plumbing Corp.*, 348 A.2d 310, 312 (D.C. 1975).

³ The February 1 order was served on February 5, 2001.

Because the Government has not responded within the allotted time, this matter is now ripe for adjudication.

II. Summary of the Evidence

Respondent admits that its truck idled its engine for more than three (3) minutes as charged in the Notice of Infraction. Respondent explains that it was confused by the Notice of Infraction as to the appropriate manner of response. Respondent explains that it believed it had two options for response: (1) pay the \$500.00 fine sought by the Government for the alleged infraction; or (2) attend the pre-scheduled hearing date of December 5, 2000 set forth in the Notice of Infraction. Respondent alleges that it chose the second option, not realizing that, by failing to answer as directed in the Notice of Infraction, Respondent would be subject to penalties and other sanctions in addition to the fine. As a result, Respondent has offered to pay the initial \$500.00 fine, but requests a suspension or reduction in the \$500.00 penalty imposed by this administrative court's order of November 24, 2000.

III. Findings of Fact

1. By its plea of Admit with Explanation to the Notices of Infraction, Respondent has admitted that it committed a violation of 20 DCMR 900.1 on October 18, 2000.
2. On October 18, 2000, a truck owned and operated by Respondent idled its engine while parked for more than three (3) minutes in the 1200 block of First Street, N.E.

IV. Conclusions of Law

1. Respondent violated 20 DCMR 900.1 on October 18, 2000.
2. Respondent has offered to pay the full fine of \$500.00 sought by the Government for violating 20 DCMR 900.1. Accordingly, this fine will not be reduced.
3. Pursuant to D.C. Code § 6-2712, if a respondent has been duly served⁴ a Notice of Infraction and fails, without good cause, to answer within the established time limits, “the respondent shall be liable for the penalty established pursuant to § 6-2704(a)(2)(A).” Therefore, in order for this administrative court to grant Respondent’s request for a suspension or reduction of the assessed penalty, Respondent must demonstrate “good cause” for its untimely plea. D.C. Code § 6-2712(f).
4. Based on the record before this administrative court, Respondent has failed to demonstrate good cause for its untimely plea. Respondent’s statement that it was unaware that it was required to advise this administrative court of its plea prior to the pre-scheduled hearing date is unreasonable given the clear instructions on the face of the Notice of Infraction. Contrary to the assertion in Mr. Vasquez’s letter of December 1, 2000, these instructions are set forth prominently in bold typeface as follows:

WARNING: Failure to respond (see reverse) to this Notice within 15 days of the date of service will result in assessment of a penalty equal and in addition to the amount of the fine. You may also be subject to other penalties and actions allowed by law including suspension and non-renewal of your license or

⁴ The Government has certified that the first Notice of Infraction (00-10445) was duly served by mail on October 3, 2000. The Government has also certified that the second Notice of Infraction (00-10467) was duly served by mail on November 30, 2000. Respondent has made no allegations of improper or ineffective service of the Notices of Infraction in these proceedings.

permit, the sealing of your business, a lien being placed on your property, and attachment of your equipment. . . .

Accordingly, there will be no suspension or reduction of the \$500.00 penalty assessed by this administrative court's order of November 24, 2000. *Accord Department of Health v. Watergate Fitness Center, et al.*, OAH Findings of Fact, Conclusions of Law and Final Order, I-00-30137 at 4-6 (concluding Respondents' belief that attending pre-scheduled hearing was sufficient for purposes of responding to Notice of Infraction was unreasonable given clear warning on Notice of Infraction).

Therefore, upon Respondents' answer and plea, its application for suspension of the penalty, and the entire record in this case, it is hereby this ____ day of _____, 2001:

ORDERED, that Respondent shall cause to be remitted a single payment totaling **ONE THOUSAND DOLLARS (\$1,000.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) calendar days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code § 6-2713(f).

/s/ **3-2-01**

Mark D. Poindexter
Administrative Judge